

Appl. No. 10/027,716
Response Dated July 14, 2006
Reply to Office Action of March 14, 2006

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REMARKS

Claims 1-5, 7-9, 11, 12 and 14-19 stand in this application. Claims 1, 8, 11 and 14 have been amended. Claims 6, 10 and 13 have been canceled without prejudice and their subject matter incorporated into independent claims 1, 8, 11 and 14. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

At page 4, paragraph 2 claims 1-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 6,700,890 (Langley) in view of USPN 6,904,020 (Love). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant has canceled claims 6, 10 and 13 and has incorporated their subject matter into independent claims 1, 8, 11 and 14. Therefore, the obviousness rejection with respect to claims 6, 10 and 13 will be addressed below with respect to amended claims 1, 8, 11 and 14.

At page 3, lines 5-6, the Response to Arguments with respect to independent claims 1, 8 and 14 states that “the ‘using a list’ is not given patentable weight because the claims fail to explicitly teach or disclose how the list is used, to teach away from the reference.” Although Applicant respectfully disagrees with this statement, Applicant has amended claims 1, 8 and 14 to recite “automatically configuring said first PVC using a list of probe values sent with test packets to probe for configuration information for said

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PVC.” As correctly noted by the Office Action, “Langley does not explicitly teach of using a list of probe values to probe for configuration information for said PVC.” Office Action, Page 5. Consequently, it is clear that Langley fails to describe the additional language of “sent with test packets” as recited in claims 1, 8 and 14.

The Love reference also fails to disclose the missing language of claims 1, 8 and 14. According to the Response to Arguments, “[t]he ‘probe values’ are inherent since Love teaches a plurality of probes.” Office Action, Page 3. Applicant submits that the “probe values” are not inherent since the Love reference teaches only passive probing. For example, at the given cites, the Love reference states:

The system comprises a plurality of measurement probes that passively monitor or observe data streams within the communications network. Each measurement probe passively observes and collects a set or sequence of data packets from one of the physical connections within the network.

Love at column 6, lines 29-34. It is clear from this language that the Love reference teaches, at best, passive monitoring of network data streams. The Love reference does not teach sending test packets with probe values. Therefore, the Love reference fails to disclose, teach or suggest the missing language. Consequently, the Langley reference and Love reference, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claims 1, 8 and 14.

To further clarify that the language “probe values” as recited in the claimed subject matter is not described by the Love reference, claims 1, 8 and 14 have been amended to recite “wherein said probe values and said configuration information

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comprise a virtual channel identifier (VCI) and a virtual path identifier (VPI).” The Love reference states, at the given cites, in relevant part, the following:

Another automated network monitoring scheme involves actively injecting traffic with known characteristics into the network and monitoring the physical links within the network in order to discover the path or virtual connection over which the data travels. The injected traffic is generally test data with a known pattern that has a low probability of occurring in normal network operation. This scheme that uses ‘active’ probing of the network structure has the disadvantage of requiring access to the network to enable injection of the test data traffic.

The Love reference makes a passing reference to “injecting traffic,” but there is no mention of what type of “traffic.” Claims 1, 8 and 14 specifically recite “automatically configuring said first PVC using a list of probe values sent with test packets to probe for configuration information for said PVC” and “wherein said probe values and said configuration information comprise a virtual channel identifier (VCI) and a virtual path identifier (VPI).” The Love reference does not describe sending “test packets” with “probe values” of any type, let alone “probe values” implemented as VCI and VPI values.

Claims 1, 8 and 14 also are patentable and non-obvious over the Langley reference in view of the Love reference, whether taken alone or in combination, because a rejection based on obviousness under 35 U.S.C. § 103(a) is improper without a motivation to combine the cited references. See MPEP § 2142, for example. The Langley reference fails to discuss the use of “test packets” in any context. Therefore, the Langley reference clearly fails to provide the proper motivation to make the combination alleged by the Office Action. Similarly, the Love reference also fails to provide the proper motivation to combine since “injecting traffic” and “active probing” is considered

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a disadvantage to be overcome by the Love technique. In fact, the Love reference would teach away from a combination with the Langley reference for this very same reason.

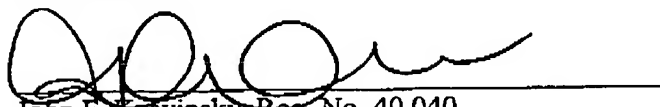
For at least the reasons given above, independent claims 1, 8 and 14 are non-obvious and represent patentable subject matter in view of the cited references, whether taken alone or in combination. Furthermore, independent claim 11 recites language similar to claims 1, 8 and 14, and therefore is also non-obvious and represents patentable subject matter for at least those reasons provided for independent claims 1, 8 and 14. Moreover, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to claims 1-5, 7-9, 11, 12 and 14-19.

It is believed that claims 1-5, 7-9, 11, 12 and 14-19 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)

Dated: July 14, 2006

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